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Courts Insist Clinton White House Obey Law

Administration Has Lost *Every* Case Claiming Privilege

"[T]he Office of the President is a part of the federal government, consisting of government employees doing government business, and neither legal authority nor policy nor experience suggests that a federal government entity can maintain the ordinary common law attorney-client privilege to withhold information relating to a federal criminal offense. . . .

"The public interest in honest government and in exposing wrongdoing by government officials, as well as the tradition and practice . . . of government lawyers reporting evidence of federal criminal offenses whenever such evidence comes to them, lead to the conclusion that a government attorney may not invoke the attorney-client privilege in response to grand jury questions seeking information relating to the possible commission of a federal crime. * * *

"With respect to investigation of federal criminal offenses committed by those in government, government attorneys stand in a far different position from members of the private bar. Their duty is not to defend clients against criminal charges, and it is not to protect wrongdoers from public exposure. The constitutional responsibility of the President and all members of the Executive Branch is to 'take Care that the Laws be faithfully executed.' "

The Clinton Administration keeps trying to withhold evidence from Federal grand juries, but the Federal courts keep ordering the White House to hand over the evidence and produce the witnesses. In fact, **the Clinton Administration has lost every one of its "privilege" cases.** The latest loss was yesterday when the U.S. Court of Appeals for the District of Columbia Circuit refused to allow the White House to claim attorney-client privilege so as to prevent presidential advisor Bruce Lindsey from testifying. The quotation above is from that court's opinion.

- Yesterday, the White House lost the Bruce Lindsay case.
- It lost the Secret Service case in May of this year and again in July.
- It lost the Bruce Lindsay/Sidney Blumenthal case in May.
- It lost the Mike Espy case in June 1997.
- It lost the Hillary Clinton case in April 1997.

[The recent case involving notes taken by the late Vince Foster's attorney was a loss for Independent Counsel Starr but not a victory for the White House which was not involved in the case.]

In the "Secret Service case," Independent Counsel Starr attempted to compel the testimony of certain Secret Service agents, but the Department of the Treasury (the principal agency over the Secret Service) refused to allow the agents to testify. The Department claimed a privilege that no one had ever heard of, the "protective function privilege." **The district court denied the Department's claim and ordered the witnesses to testify, and the court of appeals affirmed.** [*In re: Grand Jury Proceedings*, — F. Supp. —, 1998 U.S. Dist. LEXIS 7734 (D.D.C., May 22, 1998) (redacted version), *affirmed*, — F.3d —, 1998 U.S. App. LEXIS 15132 (D.C. Cir., July 7, 1998) (No. 98-3069).] A motion for rehearing and a motion for rehearing *en banc* were denied July 16. Concurring in the latter decision, Judge Silberman said:

"... I am mindful of the terrible political pressures and strains of conscience that bear upon senior political appointees of the Justice Department when an Independent Counsel... is investigating the President of the United States. Those strains are surely exacerbated when the President's agents literally and figuratively 'declare war' on the Independent Counsel. . . . The [Ethics in Government] Act, however, limits the options that the Attorney General can legally (and honorably) pursue. Litigating against the Independent Counsel in this case is not among them. . . ."

The next day, Chief Justice Rehnquist denied the Department's application for a stay. [*Rubin v. United States of America Acting Through the Independent Counsel*, — U.S. —, 1998 U.S. LEXIS 4459 (July 17, 1998) (No. A-53 (98-93)).]

In the Bruce Lindsey/Sidney Blumenthal case, Independent Counsel Starr was faced with claims of executive privilege and attorney-client privilege. **The district court held against the White House on both claims.** [*In re: Grand Jury Proceedings*, — F. Supp. —, 1998 U.S. Dist. LEXIS 7736 (D.D.C., May 26, 1998).] The White House abandoned the executive privilege claim and Mr. Blumenthal testified; it appealed the attorney-client ruling, and it was that ruling that the appeals courts upheld yesterday.

In the "Mike Espy case," Independent Counsel Donald Smaltz sought numerous White House documents in connection with his investigation of former Secretary of Agriculture, Mike Espy. The White House withheld dozens of documents, claiming executive privilege. The district court upheld all of the White House's claims of privilege, but **the court of appeals reversed and sent the case back to the district court for reconsideration in light of the principles announced by the appellate court.** [*In re: Sealed Case*, 121 F.3d 729 (D.C. Cir., 1997) (decided June 17, 1997; unsealed and unredacted opinion issued August 29, 1997).]

In the "Hillary Clinton case," Independent Counsel Kenneth Starr sought notes taken by White House lawyers during two meetings that were attended by Mrs. Clinton, government lawyers, and Mrs. Clinton's personal attorney, David Kendall. The first meeting concerned Mrs. Clinton's activities following the death of former Deputy White House Counsel Vince Foster, and the second meeting concerned the miraculous appearance in the White House residence of billing records from Mrs. Clinton's former law firm. The White House refused to surrender the notes. **The Eighth Circuit held that neither the attorney-client privilege nor the related privilege of the work-product doctrine could be claimed by either the White House or Mrs. Clinton.** [*In re: Grand Jury Subpoena Duces Tecum*, 112 F.3d 910 (8th Cir., 1997) (decided April 9, 1997; unsealed May 2, 1997), cert. denied 117 S.Ct. 2487 (1997).]